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NO. COA05-1442

NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2006

IN RE:

W.D.S.

Graham County  
No. 04 J 09

Appeal by respondent from judgment entered 3 January 2005 by Judge Steven J. Bryant in Graham County District Court. Heard in the Court of Appeals 17 May 2006.

*Sybil Grace Mann for petitioner-appellee Graham County Department of Social Services.*

*Richard E. Steinbron for Guardian ad Litem.*

*Nancy R. Gaines for respondent-appellant.*

HUNTER, Judge.

Respondent-father appeals from judgment terminating parental rights to his son, WDS. Respondent contends there was insufficient evidence to support the trial court's findings supporting termination. Respondent further argues the trial court failed to hold hearings and enter its orders in a timely fashion. We affirm the trial court.

Respondent does not contest any of the findings made by the trial court, which show that the Graham County Department of Social Services ("DSS") obtained custody of WDS on the day he was born, when a physical examination of the infant "revealed that the baby

was hypersensitive, jittery, irritable, sensitive to light and sound and had a high-pitched cry, all of which is consistent with the presence of methamphetamines in the baby's system and the baby's withdrawal from the drug." WDS now suffers from a number of health problems and receives specialized care due to his respiratory problems, reflux, sleeping disorder and sensory integration problems.

Both respondent and the mother of WDS have a history of severe substance abuse. Respondent admitted abusing Oxycontin, Oxycodone, Soma, and Xanax medicines. Respondent was incarcerated during most of the term of pregnancy for WDS. Respondent escaped from jail on 9 October 2002 and was re-incarcerated on 19 October 2002. He was released from jail on bond on 31 December 2002 on the condition that he participate in substance abuse treatment; however, he failed to participate in such treatment and was again incarcerated on 8 February 2003. While incarcerated, respondent continued to test positive for marijuana. Although respondent earned money through work release while incarcerated, he did not provide any support for his son's care. Respondent received substance abuse counseling while incarcerated, but did not follow through on recommended counseling following his release.

The trial court concluded that grounds for the termination of respondent's parental rights existed. Specifically, the trial court found that respondent neglected WDS and had willfully left the child in foster care for more than twelve months without making reasonable progress in correcting the conditions which led to the

child's removal. In its order of disposition, the trial court found that it would be in the best interests of WDS to terminate respondent's parental rights. Respondent appeals.

Although respondent does not contest the findings made by the trial court, he nevertheless asserts that he presented evidence of reasonable progress that the trial court failed to acknowledge in its findings of fact. Respondent points to evidence that he completed a thirty-day drug treatment program and a ninety-day follow-up support program while incarcerated. He also completed three parenting classes while incarcerated. When released, respondent found housing and employment.

Section 7B-1111 of the North Carolina General Statutes sets out the statutory grounds for terminating parental rights. See N.C. Gen. Stat. § 7B-1111 (2005). A finding of any one of the separately enumerated grounds is sufficient to support a termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "[T]he party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997).

In the case *sub judice*, the trial court concluded that respondent had willfully left WDS in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made towards correcting those conditions which led to the child's removal. See N.C. Gen. Stat. § 7B-1111(a)(2). The trial court also found that respondent

neglected the child. See N.C. Gen. Stat. § 7B-1111(a)(1). WDS was originally removed from the custody of his parents because of severe substance abuse. When WDS was born, "a physical examination . . . revealed that the baby was hypersensitive, jittery, irritable, sensitive to light and sound and had a high-pitched cry, all of which is consistent with the presence of methamphetamines in the baby's system and the baby's withdrawal from the drug."

Respondent concedes that he is addicted to drugs. He does not dispute that since his release from incarceration, he has failed to attend the weekly treatment sessions necessary to address his substance abuse. The trial court found that respondent's attendance was sporadic, and that respondent's "only prolonged, focused substance abuse treatment was on an involuntary basis while [he] was incarcerated." Based on respondent's actions, the trial court found that there was a probability of repetition of neglect by respondent. Respondent did not assign error to this finding. In addition to the substance abuse, respondent failed to involve himself in his child's life. Respondent sent no gifts or cards to his son, nor did he acknowledge WDS's birthday. Respondent sent no pictures to WDS, nor did he request pictures of WDS. Respondent failed to provide any clothes, accessories, or toys to WDS, although the trial court found he had means to do so.

The evidence in the record supports the trial court's findings and conclusions regarding respondent's neglect and lack of reasonable progress. Although respondent has made some effort to regain control of his life, "[a] finding of willfulness is not

precluded even if the respondent has made some efforts to regain custody of the children." *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). "Extremely limited progress is not reasonable progress." *Id.* at 700, 453 S.E.2d at 224-25. We overrule this assignment of error.

Respondent further asserts the trial court failed to hold hearings and enter its orders in a timely fashion, resulting in prejudice. Section 7B-1109 and section 7B-1110 of our General Statutes provide that a trial court must enter a written order regarding its decision on termination within thirty days of the completion of the hearing. See N.C. Gen. Stat. §§ 7B-1109(e) and 7B-1110(a) (2005). Here, the order of disposition was timely entered, but the order of adjudication was not entered until sixty days after the hearing. However:

Our Court has never held that entry of the written order outside the thirty-day time limitations expressed in sections 7B-1109 and 7B-1110 was reversible error absent a showing of prejudice. To the contrary, we have held that prejudice must be shown before the late entry will be deemed reversible error.

*In re C.J.B. & M.G.B.*, 171 N.C. App. 132, 134, 614 S.E.2d 368, 369 (2005); see also *In re B.M., M.M., An.M., & Al.M.*, 168 N.C. App. 350, 353-55, 607 S.E.2d 698, 700-02 (2005) (discussing the need for prejudice in missing timing requirements of section 7B-907(e)); *In re J.L.K.*, 165 N.C. App. 311, 315-16, 598 S.E.2d 387, 390-91 (respondent failed to show prejudice from a three-month delay in violation of N.C. Gen. Stat. § 7B-1109(e)), *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004). Although we do not condone the

delay in the present case, respondent has failed to show he was prejudiced by the sixty-day delay in the present case.

Respondent also contends that the adjudicatory hearing was untimely. N.C. Gen. Stat. § 7B-1109(a) provides in part that:

The hearing on the termination of parental rights shall be conducted by the court sitting without a jury and shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 90 days from the filing of the petition or motion unless the judge pursuant to subsection (d) of this section orders that it be held at a later time.

*Id.* Under subsection (d) of N.C. Gen. Stat. § 7B-1109,

[t]he court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile.

*Id.* However, “[c]ontinuanes that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.” *Id.*

Here, the petition to terminate was filed 5 March 2004. Respondent filed a response 28 May 2004. The mother of WDS filed her answer 11 June 2004. The adjudicatory hearing was held 26 August 2004, a little under six months after the initial filing for termination. The trial court thus violated the statute by approximately ninety days. It did not issue a written order stating the grounds for a continuance. Respondent contends the

delay was prejudicial, as he was denied access to his child and the opportunity to develop a relationship with him. We do not agree.

"There is a distinction between the failure of the trial court to reduce an order to writing, which [a]ffects the respondent's time to appeal, and a delay in scheduling a matter for hearing." *In re D.J.D., D.M.D., S.J.D., J.M.D.*, 171 N.C. App. 230, 243, 615 S.E.2d 26, 35 (2005). Here, the delay for the adjudication hearing arose in part because respondent did not respond to the petition for termination within the thirty days allotted by statute. See N.C. Gen. Stat. § 7B-1107 (2005). Moreover, respondent has never had a relationship with WDS, and there is no evidence in the record to suggest that the delay between the filing of the petition and the adjudication hearing deprived respondent of an opportunity to develop a relationship. See *In re D.J.D.*, 171 N.C. App. at 243, 615 S.E.2d at 35 (concluding that the respondent failed to show prejudice arising from delay of the adjudicatory hearing where the respondent had no relationship with his children for five years, because "[d]elays prejudice the children, who are denied permanency"). The trial court had substantial grounds to terminate respondent's parental rights. While the delay here was error, it does not rise to egregious, prejudicial delay. See *id.* at 243-44, 615 S.E.2d at 35 (holding that a forty-four day delay was not so prejudicial to the respondent to warrant reversal where there was ample evidence on multiple grounds to terminate the respondent's rights).

In conclusion, we hold the judgment of adjudication is supported by the unchallenged findings of fact, and that the delay of the trial court in holding the adjudicatory hearing and entering the order of adjudication did not unduly prejudice respondent. We therefore affirm the judgment terminating respondent's parental rights.

Affirmed.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).